

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
February 9, 2006 Session

**STATE OF TENNESSEE EX REL. ZAYNE MCPEEK v. DONALD LONG**

**Appeal from the Juvenile Court for Sevier County  
No. 05-M9-205     Dwight Stokes, Judge**

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**No. E2005-01670-COA-R3-CV - FILED APRIL 28, 2006**

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The State of Tennessee *ex rel.* Zayne R. McPeck (“the State”) filed a petition in the Juvenile Court for Sevier County (“Sevier County Juvenile Court”) seeking child support from Donald Long. The Sevier County Juvenile Court entered an order granting both current support and retroactive support for February 10, 2005, through May 31, 2005. The State appeals the Sevier County Juvenile Court order to this Court claiming that the Sevier County Juvenile Court erred by not awarding retroactive support from May of 2003. We vacate the order of the Sevier County Juvenile Court for lack of subject matter jurisdiction.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Vacated;  
Case Dismissed; and Case Remanded Solely to Collect Costs Below**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Paul G. Summers, Attorney General & Reporter; and Juan Villaseñor, Assistant Attorney General; for the Appellant, State of Tennessee *ex rel.* Zayne McPeck.

Donald Long, Soddy Daisy, Tennessee, *pro se*.

## OPINION

### Background

In May of 2003, the Juvenile Court for Hamilton County (“Hamilton County Juvenile Court”) entered an order granting legal custody of three minor children, including P.G.,<sup>1</sup> to Zayne McPeck. Donald Long is the biological father of P.G. In February of 2005, the State filed a petition in the Juvenile Court for Sevier County (“Sevier County Juvenile Court”) seeking child support for P.G. from Mr. Long. The Sevier County Juvenile Court entered an order June 8, 2005, granting both current support, and retroactive support for the dates February 10, 2005, through May 31, 2005. The State appeals the Sevier County Juvenile Court order to this Court claiming that the Sevier County Juvenile Court erred in not awarding retroactive support from the date that Mr. McPeck was granted legal custody of P.G.

### Discussion

The State raises two issues on appeal regarding whether the Sevier County Juvenile Court erred by not awarding retroactive support back to the date that Mr. McPeck acquired custody of P.G. However, the dispositive issue is whether the Sevier County Juvenile Court had subject matter jurisdiction to hear the case.

In *State ex rel. Whitehead v. Thompson*, this Court dealt with a case strikingly similar to the case at hand. *State ex rel. Whitehead v. Thompson*, No. 01A01-9511-CH-00538, 1997 Tenn. App. LEXIS 860 (Tenn. Ct. App. Dec. 5, 1997), *no appl. perm. appeal filed*. In *Thompson*, after the Wayne County Juvenile Court gave custody of a minor child to the State in a dependency and neglect proceeding, the Department of Human Services filed petitions in the Wayne County Chancery Court seeking child support from the biological parents. *Id.* at \*1. This Court held that the Wayne County Chancery Court lacked subject matter jurisdiction in the case because the Wayne County Juvenile Court already had acquired jurisdiction in the dependent and neglect proceeding and “retained jurisdiction over all related matters involving the child until the child’s majority.” *Id.* at \*9.

In *Thompson*, we instructed:

The concept of jurisdiction involves a court’s authority to adjudicate a particular controversy. *See Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977). In order to acquire jurisdiction, a court must have jurisdiction not only over the parties but also over the subject matter of the proceeding. The concept of subject matter jurisdiction concerns a particular court’s authority to hear a particular type of case. *See Meighan v. U.S. Sprint Comm. Co.*, 924 S.W.2d 632, 639 (Tenn. 1996); *Turpin*

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<sup>1</sup>This case involves issues regarding child support for the minor child P.G. only, not the other two children.

*v. Conner Bros. Excavating Co.*, 761 S.W.2d 296, 297 (Tenn. 1988). It relates to the nature of the cause of action and the relief sought, *see Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994), and can only be conferred by the Constitution of Tennessee or by statute. *See Kane v. Kane*, 547 S.W.2d at 560; *Brown v. Brown*, 198 Tenn. 600, 618-19, 281 S.W.2d 492, 501 (1955).

When more than one court has been given jurisdiction to adjudicate a particular type of controversy, subject matter jurisdiction may also be influenced by matters of comity and judicial efficiency. Thus, when two courts have concurrent subject matter jurisdiction, the first court to acquire jurisdiction over a particular case takes exclusive jurisdiction to end the matter. *See American Lava Corp. v. Savena*, 476 S.W.2d 639, 640 (Tenn. 1972); *Robinson v. Easter*, 208 Tenn. 147, 149, 344 S.W.2d 365, 366 (1961); *Wilson v. Grantham*, 739 S.W.2d 776, 777 (Tenn. Ct. App. 1986). The actions of a court that attempts to exercise jurisdiction over a case after another court with concurrent jurisdiction has already exercised jurisdiction are nullities. *See State v. Hazzard*, 743 S.W.2d 938, 941 (Tenn. Crim. App. 1987).

These principles have been applied to situations where a court of record has attempted to act after a juvenile court had already exercised jurisdiction. The Tennessee Supreme Court has held that a juvenile court that finds a juvenile to be dependent retains jurisdiction over the child until its majority, and no other court may issue custody or any other type of order regarding the child without the consent of the juvenile court. *See Kidd v. State ex. rel. Moore*, 207 Tenn. 244, 251-252, 338 S.W.2d 621, 624-25 (1960). Using similar reasoning, this court has determined that a court of record did not have jurisdiction to render custody orders with regard to children that were already the subject of a dependent and neglect proceeding pending in the juvenile court without the juvenile court's consent. *See Arnold v. Gouvitsa*, 735 S.W.2d 458, 461-62 (Tenn. Ct. App. 1987). We perceive no reason preventing the application of these precedents to child support proceedings.

*Id.* at \*\*5-7.

At oral argument in this case, we granted the State's request to file a supplemental brief on the issue of subject matter jurisdiction. The State did so. Despite the fact that it was the State that chose to file this matter in the Sevier County Juvenile Court, the State concedes in its supplemental brief that:

it appears that the Juvenile Court for Sevier County lacked subject matter jurisdiction over the petition to set support because the Hamilton County Juvenile Court had previously acquired jurisdiction over [P.G.] and that case has not been dismissed or transferred. Tenn. Code Ann. § 37-1-103(c). On its face, the custody order emanated from a petition for custody predicated upon [the mother's] inability to care for her children, i.e., from a petition in which Mr. McPeck alleged that the children were

dependent and neglected. The Hamilton County Juvenile Court implicitly found, [the mother] lacked a “stable home.” Ex. 1. Nothing in this appellate records (sic) suggests that the Hamilton County Juvenile Court dismissed its case or transferred this matter to Sevier County. Therefore, the Juvenile Court for Sevier County lacked subject matter jurisdiction over the petition to set support filed against Mr. Long.

In the case at hand, the Hamilton County Juvenile Court acquired jurisdiction over P.G. when it entered its order granting legal custody of P.G. to Mr. McPeck in May of 2003. As such, the Sevier County Juvenile Court did not have subject matter jurisdiction to hear the case. Therefore, the order entered by the Sevier County Juvenile Court awarding child support is a nullity. We vacate the June 8, 2005 order of the Sevier County Juvenile Court for lack of subject matter jurisdiction.

We are not unaware of the basic unfairness of this outcome. The State filed this matter in the wrong court, put Mr. Long to all the effort and expense in his *pro se* representation, received a judgment it is unhappy with, and now receives the benefit of having the judgment vacated and the matter dismissed solely because of the State’s error leaving the State free to proceed anew in the proper court. We, however, see no alternative.

### **Conclusion**

The judgment of the Juvenile Court for Sevier County is vacated, this case is dismissed, and this cause is remanded to the Juvenile Court for Sevier County solely for collection from the State of the costs below. The costs on appeal are assessed against the Appellant, the State of Tennessee.

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D. MICHAEL SWINEY, JUDGE